

*a***SURES PERUMAL****v.****PP***b*

HIGH COURT MALAYA, TAIPING
VT SINGHAM JC
[CRIMINAL APPEAL NO: 41-39-2000]
15 JANUARY 2001

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CRIMINAL PROCEDURE: *Conviction - Validity of conviction - Drugs Dependants (Treatment and Rehabilitation) Act 1983, s.(3) - Conviction based on drug cannabinoid which is not listed as a dangerous drug under the Dangerous Drugs Act 1952 - Whether conviction disclosed an offence in law - Whether valid*

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CRIMINAL PROCEDURE: *Appeal - Conviction, against - Right of appeal - Whether appellant had a right of appeal in view of guilty plea - Criminal Procedure Code, s. 305 - Whether restriction in s. 305 applies if conviction not valid*

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The appellant appealed against his sentence of 24 months' imprisonment passed by the magistrate for an offence punishable under s. 6(3) of the Drugs Dependants (Treatment and Rehabilitation) Act 1983.

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At the outset of the appeal, the appellant urged the court to revise the order of the magistrate on the conviction of the appellant as the urine test done on the appellant disclosed the drug cannabinoid which was not a dangerous drug listed under the First Schedule of the Dangerous Drugs Act 1952.

Held:

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[1] Although the appellant's appeal was on sentence only, this court sitting as an appellant court was obliged to look into the record of appeal and exercise its power of revision if the record showed that a failure of justice had occasioned by any irregularity in the proceedings.

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[2] The charge as framed did not disclose an offence under the Drugs Dependants (Treatment and Rehabilitation) Act 1983. The charge alleged that the appellant took a drug and not a dangerous drug. In order to label the appellant as a drug dependant, he must have taken a dangerous drug and not just any drug.

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[3] The findings of the chemist on the urine test disclosed that the specimen urine contained cannabinoid which was not a dangerous drug under the First Schedule of the Dangerous Drugs Act 1952.

- [4] The facts presented by the prosecuting officer stated that the findings of the chemist disclosed the drug cannabis. That was incorrect as the chemist report expressly stated that the drug was cannabinoid. There was no medical or chemical evidence that cannabinoid was derived from cannabis or any other dangerous drugs. The learned magistrate or even this court, if it had knowledge as to the source from which cannabinoid was derived from, could not import personal knowledge as a substitute or supplement for medical or chemist evidence. a
- [5] The facts presented by the prosecuting officer stated that the alleged offence was committed on 17 March 2000 whereas the date of the alleged offence contained in the charge stated 6 March 2000. b
- [6] Section 305 of the Criminal Procedure Code states that an accused has no right of appeal if he pleads guilty to the conviction. Notwithstanding the said restriction, because of the illegality of the conviction, this was an appropriate case to revise the order of the learned magistrate. Therefore, the conviction was quashed and the sentence set aside. No retrial ordered as the prosecution would not be able to file an amended charge because the urine test did not disclose a dangerous drug. Further, there were incurable flaws carried out by the investigation agency. c

[Appellant acquitted and discharged.] d

Case(s) referred to:

Habeeb Najar Abdul Rashid lwn. Penguasa Komandan, Pusat Serenti Bukit Mertajam vide High Court, Pulau Pinang Criminal Application No: 44-12-69 (unreported) (refd)

Heng Kim Khoon v. PP [1972] 1 MLJ 30 (foll) e

Kerry v. Carter [1969] 1 WLR 1372 (refd)

Manokaran & Anor v. PP [1979] 1 MLJ 262 (foll)

Mee Lian Co v. PP [1962] 28 MLJ 131 (foll)

Mohd Dalhar Redzwan & Anor v. Datuk Bandar, Dewan Bandaraya Kuala Lumpur [1995] 2 CLJ 209 (foll)

PP v. Anthony [1972] 1 MLJ 229 (foll) f

PP v. Lee Ee Teong [1953] 19 MLJ 244 (foll)

PP v. LKI Holidays Leisure Sdn Bhd [1997] 3 CLJ 739 (foll)

PP v. Low Ah Sang [1962] 28 MLJ 13 (foll)

PP v. Paghuthen [1969] 1 MLJ 25 (foll)

Sau Soo Kim v. PP [1975] 2 MLJ 134 (foll)

Re Radha Krishna Naidu [1962] 28 MLJ 130 (refd) g

Subramaniam & Anor v. PP [1976] 1 MLJ 76 (foll)

Tang Kee Chie v. PP [1987] 1 MLJ 430 (foll)

Wong Siak Fon v. PP [1972] 1 MLJ 203 (foll) h

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a Legislation referred to:

Criminal Procedure Code, s. 305

Drugs Dependants (Treatment and Rehabilitation) Act 1983, ss. 2, 6(1)(b), (3)

For the appellant - S Sundarajan

For the DPP - Abdul Hakim Amir Ahmad Nordin

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Reported by Usha Thiagarajah

JUDGMENT

VT Singham JC:

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This is an appeal by the appellant against the sentence passed on him by the magistrate's court, Sungai Siput on 25 October 2000 for an offence punishable under s. 6(3) of the Drugs Dependants (Treatment and Rehabilitation) Act 1983. The learned magistrate sentenced the appellant to 24 months imprisonment for breach of a supervision order dated 14 January 2000 given by the magistrate's court, Kuala Kangsar to undergo supervision by a rehabilitation officer for a period of two years for a drug related offence under the Drugs Dependants (Treatment and Rehabilitation) Act 1983. One of the conditions of the said order dated 14 January 2000 was that the appellant cannot take, consume, or possess any dangerous drugs.

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The charge reads as follows:

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Bahawa kamu pada 6.3.2000 jam lebih kurang 9.15 pagi di Balai Polis Sungai Siput (U) dalam Daerah Sungai Siput Utara di dalam Negeri Perak Darul Ridzuan sebagai seorang yang diletakkan di bawah "Pengawasan Dadah" di bawah perenggan 6(1)(b) telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 6(3) Akta Penagih Dadah (Rawatan dan Pemulihan) No. 283/83 pindaan 1998.

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The supervision order dated 14 January 2000 issued by the Magistrate's Court, Kuala Kangsar was under s. 6(1)(b) of the Drugs Dependants (Treatment and Rehabilitation) Act 1983 wherein it states that the appellant was confirmed to be a drug dependant by a government medical officer and the magistrate after having giving the appellant an opportunity to make representation and upon the recommendation of the rehabilitation officer, ordered the appellant to undergo supervision by the rehabilitation officer for a period of two years with effect from 14 January 2000.

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Section 6(1) of the said Act reads as follows:

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6. Magistrate's order which may be made on a drug dependant.

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1) Where a person who has undergone the tests referred to in section 3 or 4 and, in consequence of such tests, is certified by a government medical officer or a registered medical practitioner to be a drug dependant, the officer shall produce him, or cause him to appear before a magistrate, and the magistrate shall upon the recommendation of a rehabilitation officer and after giving such person an opportunity to make representations –

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b) order such person to undergo supervision by an officer at the place specified in the order for a period of not less than two and not more than three years.

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On 17 March 2000 at about 9.15am while the said supervision order dated 14 January 2000 was still in force, the appellant was arrested and specimen urine was taken from him by detective Sergeant Abdullah Bin Kader of the Anti Dadah branch, Balai Polis, Sungai Siput and the specimen urine was sent to the General Hospital Ipoh to the laboratory for test and analysis for drugs. The result of the analysis and test carried out by Encik Sabab Bin Hashim, a Chemist of Jabatan Patologi Hospital Ipoh was disclosed in his report dated 25 March 2000 which confirmed that the urine contained *Cannabinoid*. The appellant was also confirmed to be a drug dependant and the dangerous drug was confirmed to be *Cannabinoid* by Dr Kevin L Joseph of Hospital Sungai Siput in his report dated 18 August 2000 as a result of the necessary test carried out by him on the appellant.

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As a result of the specimen urine taken from the appellant on 17 March 2000, based on the chemist report dated 25 March 2000, the police report lodged by detective Sergeant Abdullah Bin Kader on 4 April 2000 and the medical report dated 18 August 2000, the appellant was charged on 25 October 2000 at the magistrate's court, Sungai Siput for breach of the said supervision order dated 14 January 2000 issued by the magistrate's court, Kuala Kangsar. The charge against the appellant was for an offence under s. 6(3) of the Drugs Dependants (Treatment And Rehabilitation) Act 1983 which provision reads as follows:

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Section 6(3) of the said Act reads as follows:

Any person undergoing supervision under paragraph Sec. 6(1)(b) who fails to comply with any condition imposed under the section shall be guilty of an offence and shall on conviction be liable to be punished with imprisonment for a period not exceeding three years **OR** to whipping not exceeding three strokes **OR** to both.

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- a* The appellant who was unrepresented at the magistrate's court, Sungai Siput pleaded guilty to the charge and he was sentenced to 24 months imprisonment from the date of his remand on 18 August 2000. The appellant being dissatisfied with the sentence, filed his appeal through the prison department to the High Court, Taiping against the sentence. At the appeal, the appellant
- b* was represented by counsel Mr. S. Sundarajan and the respondent was represented by En. Abdul Hakim Amir Bin Ahmad Nordin, the deputy public prosecutor.

Appeal

- c* At the outset of the appeal, the learned counsel for the appellant urged this court to exercise its reversionary powers as the conviction was unlawful on the ground that the conviction against the appellant was on a charge which does not disclose an offence under the law and the drug, namely, *Cannabinoid*
- d* was not a dangerous drug under the first schedule of the Dangerous Drugs Act 1952. However, this court before proceeding to exercise its powers of revision, invited both the learned counsel for the appellant and the learned deputy public prosecutor to address this court as to whether this court should in fact revise the order made by the learned magistrate of the magistrate's court as the appeal was only against the sentence. It is important to state at this stage that since the appellant had pleaded guilty to the charge there is no
- e* right of appeal against the conviction as provided under s. 305 of the Criminal Procedure Code. As expected, when the learned counsel for the appellant started to address the court, the learned deputy public prosecutor with his usual frankness stood up and said that in order to save judicial time, he would concede that the conviction cannot be sustained.
- f* In this particular case, the learned magistrate, with respect, seemed not to have considered or read carefully the charge and the facts presented by the prosecution and seems to have gone on a mechanical exercise of his powers which is not an appropriate judicial exercise and is left much to be desired.

g Drafting Of Charges

In *Mee Lian Co v. PP* [1962] 28 MLJ 131, His Lordship Adams J said

- h* I must yet again draw the attention of Prosecuting Officers to the necessity of drafting correct charges against the correct person and also of proving to the satisfaction of the Court all the ingredients of the charge. Finally, it is the duty of the Court to see that the charge is properly drawn at the time it is read and explained to the defendant. This clearly could not have been done in this case.

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In *PP v. Low Ah Sang* [1962] 28 MLJ 13 at p. 15, His Lordship Hashim J said: a

I shall now deal with the charge and the order of the learned President. In my opinion the charge was very badly drafted. In this respect I would commend all Presidents of Sessions Courts and Magistrates to read and digest the observations of the learned Chief Justice. In his oral judgment in *Public Prosecutor v. Syed Bakri* (Ipoh Criminal Revision No. 3 of 1955 – unreported) his Lordship said: “I have repeatedly emphasised that in framing charges prosecution officers should adhere as closely as possible to the wording of the statute constituting the offence which is charged and the Magistrates should be at pains to see that this is done. If it is done, the prosecution know what they have to prove and the accused person knows what is charged against him. If it is not done, then there is the danger of a muddle of the sort that has come to light in this case,” as it has come to light in this appeal. b
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In *Subramaniam & Anor v. PP* [1976] 1 MLJ 76 at p. 78, His Lordship Ajaib Singh J had this to say: d

The framing of the charges in this case and the subsequent conduct of the proceedings in court left much to be desired. The administration of criminal law is not to be treated light-heartedly but is to be carried out seriously with a sense of dedication and with great care and attention.

In *Manokaran & Anor v. PP* [1979] 1 MLJ 262 at 263, His Lordship Abdoolcader J as His Lordship then was said: e

It is a matter of the gravest public policy that the impartiality of the courts of justice should not be doubted, or that the fairness of a trial should be questioned; otherwise, the only bulwark of the liberty of the subject would be undermined. f

In *Heng Kim Khoon v. PP* [1972] 1 MLJ 30 at 31, His Lordship Sharma J said:

In taking down a plea of guilty the use of the set formula: g

Charge read over and explained to the accused and understood by him.
Pleads guilty. Understands the nature and consequences of his plea. Plea accepted.

should not be the result of sheer wont and habit as if it was an empty and meaningless ritual which the pen irresistibly begins to perform and complete once the magic words “I plead guilty” are uttered by the accused. The taking down of a plea of guilty is a solemn and serious act and the magistrates should devote some time and active thought before they decide to accept that plea and base a conviction thereon. h

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a A plea of guilty only amounts to an admission that the accused committed the acts alleged against him and not an admission of the guilt under a particular section of the Act. If he pleads guilty under an erroneous view of the law his conviction cannot stand. In such a case the plea of guilty does not avail because he cannot be said to have committed the offence in question in the eyes of the law.

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In *Heng Kim Khoon v. PP* [1972] 1 MLJ 30 at 31, His Lordship Sharma J referred to His Lordship's own decision in Malacca Criminal Revision No. 4 of 1970 wherein His Lordship said:

c I like to add that when an accused person pleads guilty it is the duty of the learned magistrate to carefully consider whether the accused fully understands the nature of the charge to which he pleads guilty. A plea of guilty, as has been said, must be received with caution and generally the court should satisfy itself by putting questions to the accused in order to see whether he is aware of the facts on which the charge is founded against him and also whether he admits his guilt voluntarily without any extraneous pressure or expectation of a lesser sentence. An accused does not plead to a section of a criminal statute.

d He pleads guilty or not guilty to the facts alleged in the charge which in law are said to disclose an offence under the section named in the charge ... It is the duty of the appellate court to see that the accused had not pleaded guilty on a misconception of law or that his conviction was not founded on such evidence which did not or could not constitute the offence under the charge.

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Revisional Powers

f In *PP v. Anthony* [1972] 1 MLJ 229 at 230, His Lordship Sharma J in exercising His Lordship's powers of revision in a case where the accused was convicted on his plea of guilty which His Lordship set aside and quashed the conviction said:

g I regret the liberty of a subject has by the lack of ordinary and requisite care expected of the courts in every case been imperilled and unnecessarily interfered with. I may also take this opportunity to say that the prosecution itself should exercise a lot more care and vigilance in framing a charge against an accused. The object of a charge is to give notice to the accused of the essential facts constituting the offence which he is alleged to have committed and the law he has violated. The charge should be capable of being substantiated with as much evidence as is available to the prosecution. It is not enough merely to say that some offence has been committed by the accused. He is required to answer a specific charge and meet the specific allegations in the charge and pointedly plead thereto alone.

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i I am, however, thankful to the learned deputy for having at this stage very candidly conceded that the charge against the accused was wrong in law and unsustainable. But for the manly and scrupulous honesty with which the learned deputy has acknowledged the folly of the charge and the futility of the

prosecution case it would have been impossible for me to know the facts relied upon by the prosecution. I commend the spirit in which the information has been given to the court. Fairness should characterise every prosecution. The magistrates (and judges as well), like all human beings, at times are apt to fall into error and take the wrong sow by ear. Injustice is thus prone to result in those cases where the court slips into such error. It however adds to the stature, lustre and dignity of man if once that mistake is discovered, detected or brought to his notice he does not hesitate to own it. The learned magistrate deserves credit for having brought this matter to the High Court and the learned deputy equally great credit for having stated the correct position so that the mistake already made could be rectified and the accused restored to his freedom.

In *PP v. LKI Holidays Leisure Sdn Bhd* [1997] 3 CLJ 739 at pp. 742-743, in dismissing the appeal on behalf of the public prosecutor, His Lordship Dato' Mohd. Hishamudin J said:

This observation has been bothering me for quite some time and I think I should take the opportunity here to comment that prosecuting officers should not take the task of drafting charges lightly. The attitude that drafting charges is a mere mechanical task ought to be discarded. Prosecuting officers should take the task seriously. They should be meticulous and at the same time ensure that the provision of ss. 152, 153 and 154 of the Criminal Procedure Code (FMS Cap 6) ('the CPC') are strictly adhered to. They should, from time to time, seek the advice of the public prosecutor, especially when it concerns the drafting of less common offences (for instance, like the one in the present case). Magistrates too are under a duty to ensure at the commencement of any criminal case before them that the charge has been properly drafted. Should it come to the notice of the presiding magistrate that the charge is defective, he should promptly bring it to the attention of the prosecuting officer, and thereafter take the necessary measures to rectify the defect. Let me remind magistrates and prosecuting officers of the advice of Thomson J (who later became our first Lord President) given more than 40 years ago. In his oral judgment in *PP v. Syed Bakri* (Ipoh Criminal Revision No 3 of 1955, unreported), his Lordship said:

I have repeatedly emphasised that in framing charges prosecution officers should adhere as closely as possible to the wording of the statute constituting the offence which is charged and that magistrates should be at pains to see that this is done. If it is done, the prosecution know what they have to prove and the accused person knows what is charged against him. If it is not done, then there is the danger of a muddle of the sort that has come to light in this case.

This court is of the view that although the appellant's appeal is on sentence only, this court sitting as an appellate court is obliged to look into the record of appeal and exercise its power of revision if the record shows that a failure of justice had occasioned by any irregularity in the proceedings. In this case,

- a* the appellant had pleaded guilty to a charge which does not constitute an offence in law. Bearing in mind that this court is bound by the language of the law and to give effect to it when language is crystal clear, this court is of the view that there must be judicial intervention by an appellate court in cases where the appeal record so glaringly shows that there has been a miscarriage of justice on the legality of the conviction which is being challenged and conceded on behalf of the public prosecutor. This court is of the view that it is the function of this court sitting as an appellate jurisdiction to put right the record which has gone wrong in the subordinate courts as it happened in this case. His Lordship, the late Lord Denning MR in *Kerry v. Carter* [1969] 1 WLR 1372 at 1376 said:
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- c*

If we think that the judge below was wrong, then we ought to say so, ...

In *PP v. Paghuthen* [1969] 1 MLJ 25 at 26, His Lordship Ong Hock Sim J said:

- d* ... where an accused person has been convicted by the magistrate on his own plea of guilty and is precluded from appealing against the legality of the sentence under section 305 of the States Code, the appellate court can always in a proper case exercise its powers of revision, I decided to revise this case. I find in the circumstances, justice is best done if I quash the conviction on these charges and order the fines to be refunded.
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In *Wong Siak Fon v. PP* [1972] 1 MLJ 203 at 205, His Lordship Lee Hun Hoe J as His Lordship then was said:

- f* In the present case although the appellant has no right of appeal against his conviction the appellate court is entitled to look into the record and, if there is any irregularity which occasions a failure of justice, the court will exercise its powers of revision.

In *Tang Kee Chie v. PP* [1987] 1 MLJ 430 at 431, His Lordship Chong Siew Fai J as His Lordship then was in setting aside the conviction and sentence of an accused on his own plea of guilty referred to *Heng Kim Khoon v. PP* [1972] 1 MLJ 30 and *Subramaniam & Anor v. PP* [1976] 1 MLJ 76 and said:

- g*
- h* If the facts disclosed in a case show the absence of an essential ingredient constituting the alleged offence such that no court would have convicted the accused, the conviction and sentence will be set aside. Even if there is no right of appeal, this court as the appellate court is entitled to look into the record and exercise its power of revision if the record shows that a failure of justice had occasioned.

However, this court is not unmindful of the case in *Re Radha Krishna Naidu* [1962] 28 MLJ 130, wherein His Lordship Hepworth J said:

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It should only exercise revisional powers in exceptional cases when there has been a denial of the right of a fair trial or it is urgently demanded in the interests of public justice. In my opinion the legislature does not intend that a private party shall secure by an application in revision a right which is reserved for the Public Prosecutor only. (See *Mandal v. Mandal*, *Rai v. Dass* and *Mallal's Criminal Procedure*, 3rd edition, page 379).

In my view this is not a case in which I ought to interfere and accordingly there will be no order on the revision.

On the other hand, in *Mohd Dalhar bin Redzwan & Anor v. Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 2 CLJ 209 at 218, His Lordship Gopal Sri Ram JCA in delivering the majority judgment of the Court of Appeal said:

A court hearing an appeal against sentence is entitled to and will, where appropriate, act in revision set aside a conviction.

However, His Lordship had a qualification to this proposition when His Lordship said that:

save in exceptional cases and for very good reasons, there can be no resort had by a party to the revisionary jurisdiction of the High Court when the decision complained of is appealable and no appeal has been lodged.

Be that as it may, in the meantime, this court wish to take this opportunity to remind magistrates not to hurry justice but to carefully consider the facts and the charge presented by the prosecution especially when the prosecuting officer is not qualified in law and when the accused person is not represented by a lawyer so as to ensure that the charge and/or the facts presented by the prosecution discloses an offence in law before accepting the plea of guilt of an accused person because an accused person cannot be found guilty and convicted of a charge which does not disclose an offence in law. It has been said time and time again that **“Justice hurried is justice denied”** and magistrates must take time to consider the charge and the facts and read the law reports to keep in breast with the decision of the Superior Courts so that their decision will be in accordance with the law and settled principles of law. Unless this procedures are complied by the subordinate courts, it would deem necessary that this court will always be compelled to revert on its powers of revision on an appeal in a case where an accused person has pleaded guilty and convicted on a charge which does not disclose an offence in law. In *Habeeb Najar Abdul Rashid lwn. Penguasa Komandan, Pusat Serenti Bukit Mertajam vide High Court, Pulau Pinang Criminal Application No: 44-12-69* (unreported), His Lordship YA Dato' Mohd Nor bin Hj Abdullah said:

- a* Saya ingin mengambil kesempatan ini untuk memberi nasihat dan membuat teguran kepada setiap Majistret dan Hakim Mahkamah Sesyen supaya sentiasa merujuk kepada Undang-Undang statute yang terkini atau kemaskini.

This court is of the view that if an accused person pleads guilty to a charge under an erroneous view of the law, his conviction cannot stand and in such a case the plea of guilty cannot be sustained because he cannot be said to have committed the offence in question in the eyes of the law.

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Decision Of This Court

- c* In allowing the appeal against both the conviction and sentence, although the appeal was in reference only against sentence, this court finds that the charge against the appellant did not disclose an offence under the Drugs Dependents (Treatment And Rehabilitation) Act 1983 as charged and that the conviction cannot stand in law for the following reasons:

- d* Firstly, the charge which was framed against the appellant did not disclose an offence under the Drugs Dependents (Treatment And Rehabilitation) Act 1983 because the charge alleges that the appellant took drug and not dangerous drug during the period when he has been ordered to undergo supervision by a rehabilitation officer. In order to label the appellant or any person as a drug dependant, he or she must have taken to use dangerous drug and not just any drug.

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The term “drug dependent” as defined in s. 2 of the Drugs Dependents (Treatment And Rehabilitation) Act 1983 states that:

- f* a person who through the use of any dangerous drug undergoes a psychic and sometimes physical state which is characterised by behavioural and other responses including the compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effect and to avoid the discomfort of its absence.

- g* Secondly, the findings of the chemist of the General Hospital, Ipoh on the test carried out on the specimen urine of the appellant discloses that the specimen urine contained *Cannabinoid* which is not a dangerous drug or substance comprised in the first schedule of the Dangerous Drugs Act 1952.

- h* Thirdly, the **facts** presented by the prosecuting officer and read to the appellant exh. P1 by the learned magistrate states that the findings of the chemist discloses that the specimen urine of the appellant contained *Cannabis* which is incorrect and misleading because the government chemist report exh. P4 expressly states the drug found in the specimen urine of the appellant was *Cannabinoid*. There was no medical or chemist evidence that *Cannabinoid* is derived from *Cannabis* or any other dangerous drugs and the learned magistrate

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or this court even if it has knowledge as to the source from which *Cannabinoid* is derived, it cannot import personal knowledge as a substitute or supplement for medical or chemist evidence. In *PP v. Lee Ee Teong* [1953] 19 MLJ 244, His Lordship Thomson J as His Lordship then was said:

It is not open to any Judge or Magistrate to import his personal knowledge on the point into a criminal trial so as to help out evidence for the prosecution which would otherwise be inadequate to support a conviction.

Fourthly, the **facts** presented by the police prosecuting officer states that the alleged offence was committed on 17 March 2000 whereas the date of the alleged offence contained in the charge states as 6 March 2000 which date is not even related to the date the specimen urine which was taken from the appellant on 17 March 2000 by detective Sergeant Abdullah for a test to be carried out by the Government Bio Chemist.

As stated above and in view of the abovementioned flaws, this court sitting as an appellate court could always exercise its powers of revision notwithstanding the restriction in s. 305 of the Criminal Procedure Code because the conviction is illegal and therefore this is an appropriate case to revise the order of the learned magistrate.

Section 305 of the Criminal Procedure Code reads as follows:

When plea of guilty limited right of appeal

When an accused person has pleaded guilty and been convicted by a Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

It is settled principle that when an accused person pleads guilty to an offence not known to law or to a charge which does not disclose an offence in law, the plea of guilt ought not to be accepted by the magistrate. In *Sau Soo Kim v. PP* [1975] 2 MLJ 134, His Lordship Lee Hun Hoe CJ (Borneo) said:

... if an accused pleaded guilty to a charge which creates no offence known to law and further the facts also disclose no offence, clearly such a conviction could not be allowed to stand. Surely, such a plea of guilty to what is not an offence is no plea at all.

Retrial

In the circumstances, the appeal is allowed, the conviction is quashed and the sentence is set aside and the appellant is acquitted and discharged. In this matter this court wishes to make it clear that no order for a retrial was made because the prosecution will not in any event be able to file an amended charge because the result of the analysis of the specimen urine taken from

- a* the appellant does not itself disclose an offence under the Drugs Dependents (Treatment and Rehabilitation) Act 1983 namely, *Cannabinoid* which as stated above is not a dangerous drug or substance comprised in the first schedule of the Dangerous Drugs Act 1952 and the prosecution with respect, based on the facts and circumstances in this case will not be able to correct this situation
- b* based on the evidence and the documents submitted to the magistrate's court as there has been an incurable flaw in the investigation carried out by the investigation agency.
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